

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **3:CR-18-0097**
:
v. : **(Judge Mariani)**
:
ROSS ROGGIO : **(Electronically filed)**

ROGGIO'S MOTION IN LIMINE
EXPERT OPINION TORTURE

AND NOW comes the Defendant, Ross Roggio, by his attorney, Gino Bartolai, Esquire, and files the following Motion in Limine, and in support thereof avers the following:

1. On March 20, 2018, Roggio was charged in an Indictment with conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371; violations of the Arms Export Control Act, Title 22, United States Code, Sections 2778(b) and (c); and the International Emergency Powers Act, Title 50, United States Code, Sections 1702 and 1705(c); smuggling goods from the United States, in violation of Title 18 United States Code Sections 554 and 2; wire fraud, in violation of Title 18, United States Code Section 1342; and money laundering, in violation of Title 18 United States Code, Sections 1956(a)(2)(A) and 2.

2. On March 23, 2018, Roggio appeared before Magistrate Judge Karoline Mehalchick for an initial appearance and arraignment and entered a plea of not guilty to the charges.

3. On February 15, 2022, Roggio was charged in a Superseding Indictment with two additional charges; Conspiracy to Commit Torture in violation of Title 18, U.S.C. Sections 2340 and 2340A (c), and Torture in violation of Title 18, U.S.C. Sections 2340, 2340(A)(a) and 2.

4. On February 17, 2022, Roggio was arraigned before Magistrate Judge Joseph F. Saporito on the Superseding Indictment and entered a plea of not guilty.

5. Trial in this matter is presently scheduled for May 8, 2023.

6. Roggio has received material through discovery. While presently counsel is unsure as to what the Government will offer in its case-in-chief, certain matters have manifested themselves through the discovery so that counsel can identify them now and seek their exclusion at trial.

7. Accordingly, Roggio submits that evidence of the following nature should not be permitted at his trial;

A) The Government has made an Expert Disclosure Notice for Zuhair Jumaah Al-Maliki, an expert in Iraqi law, who is said to testify that torture is illegal in Iraq. The Notice also states, “In addition, Mr. Al-Maliki may testify as to whether certain actions described to him would constitute torture under Iraqi law.”

8. Expert testimony of the sort identified in the previous paragraph should not be admissible because an expert witness may not draw the ultimate conclusion for the jury or testify in such a way that the ultimate conclusion is inevitable.

United States v. Davis, 726 F.3d 434, 446 (3rd Cir. 2013).

9. Additionally, Roggio submits that the probative value, if any, of such evidence is substantially outweighed by the danger of unfair prejudice and should be excluded under Fed. R. Evid. 403.

10. Roggio respectfully reserves the right to challenge any other evidence that is irrelevant, immaterial, privileged, and/or that is otherwise prejudicial.

WHEREFORE, the Defendant, Ross Roggio, respectfully requests that this Honorable Court should preclude the Government from offering the above type of evidence at Roggio's trial.

Respectfully submitted,

Date: April 7, 2023

s/Gino Bartolai
Gino Bartolai, Esquire
Attorney ID# PA 56642

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Attorney for Ross Roggio

CERTIFICATE OF NON CONCURRENCE

I, Gino Bartolai, Esquire, certify that on this date I contacted Todd K. Hinkley, Assistant United States Attorney, who advised that he does not concur in the within Motion in Limine.

Date: April 7, 2023

s/Gino Bartolai
Gino Bartolai, Esquire

CERTIFICATE OF SERVICE

I, Gino Bartolai, Esquire, do hereby certify that I electronically served, via e-mail, a copy of the foregoing **Motion in Limine**, to the following

Todd K. Hinkley, Esquire
Assistant United States Attorney

and by placing the same in the United States mail, first class, postage prepaid, at Scranton, Pennsylvania, addressed to the following:

Ross Roggio

Date: April 7, 2023

s/Gino Bartolai
Gino Bartolai, Esquire